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BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 582 (Sub. No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

**COMMENTS OF THE "ALLIED RAIL UNIONS"
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

The Rail Labor organizations that are participating in this proceeding as the Allied Rail Unions ("ARU")[1], individually and collectively, submit these comments in response to the Notice Of Proposed Rulemaking and request for comments served by the Board on October 3, 2000. The ARU join in, and adopt as their own, the Comments filed by the Rail Division of the Transportation Trades Department AFL-CIO.

The ARU wish to emphasize their concern that the Board has not adequately addressed the problem of carrier use of the Board approvals of transactions to override existing collective bargaining agreements. The Board would add language that suggests a sympathetic ear to the problems of Rail Labor, but it has not offered concrete language and specific rules that would bring about real change. The proposed new language in Section 1180.1(e) would state that the Board supports negotiated arrangements between labor and management, and that "the Board respects the sanctity of collective bargaining agreements and will look with extreme disfavor on overrides of collective bargaining agreements except to the very limited extent necessary to carry

[1] The Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders Blacksmiths Forgers and Helpers; National Council of Firemen and Oilers/SEIU; Sheet Metal Workers International Association, and the Transport Workers Union of America

out an approved transaction". However, the proposed revision lacks standards and it contains no specific rules that would result in a change in the status quo.

ICC and STB decisions, and arbitration awards that have been sanctioned by the Board, have allowed the use of cramdown as a means of compelling collective bargaining agreement changes, sometimes many years after the primary approved financial transaction had been consummated. The ICC and STB and arbitrators have accepted carrier arguments that they were carrying-out transactions and could override agreements not only when they combined adjoining seniority districts of previously separate carriers, but also when they merged multiple, non-contiguous, seniority districts in several states that were previously separate districts within the same pre-merger carrier. It is one thing for carriers to claim a necessity to change existing agreements when they are combining work forces at common points or common territories where there will be ongoing mixed assignments with employees who previously worked under different agreements regularly assigned to the same locations or territories. It is an entirely different matter for the carriers to claim that agreements must be changed in order to create vast seniority districts or work territories or regions under a single agreement where the real change is not in the combination of previously separate workforces with consolidated assignments of work, but rather in the agreement that will govern the employees involved. The carriers have also claimed that they were carrying-out transactions when they took over operation of facilities previously controlled by an acquired carrier, even when they did not merge those facilities with their pre-merger facilities and were not coordinating the work of previously separately owned facilities.

To the carriers, maintaining separate agreements at separate stand-alone facilities, in separate seniority districts and even in their own separate work regions that do not interact with each other is simply undesirable, and they use cramdown to just eliminate agreements, even when there is no operational reason to do so. Sometimes they have used cramdown just to eliminate agreements that they do not like. These changes have been accomplished with the approval of the agency and its arbitrators because they were supposedly "necessary" to the "carrying-out" of the approved transactions (even ones consummated many years earlier). Unfortunately, under current precedent, the concept of "necessity" has been transmuted into "convenience" and then "desirability"–if a carrier asserted that overriding an agreement would reduce its costs, that was enough to justify evisceration of the agreement. The carrying-out of the transaction standard has been transmuted from effecting the approved financial transaction, to implementation of the consolidation made possible by common ownership, to realization of efficiencies and economies of the type contemplated the merger/control applicants. And the "transaction" has been transmuted from the approved merger or acquisition of control, to the alleged goals of the transaction. Recent precedent has sanctioned cramdown whenever it would be advantageous for facilitation of any plan that might be related to the applicants' objectives in consolidating, including simple reductions in their labor costs.[2]

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[2] This history is set forth detail in two articles by William G. Mahoney in the Transportation Law Journal (University of Denver): *The Interstate Commerce Commission/Surface Transportation Board As Regulator Of Labor's Rights And Deregulator Of Railroads' Obligations: The Contrived Collision Of The Interstate Commerce Act With The Railway Labor Act*, vol. 24, number 3, Spring/Summer 1997 at 241-302 and *The Future of Railroad Labor Management Relations As An Industry of Five, Or Three, Or Two Mega-Railroads Enter The Next Millennium*, vol. 26, number 3, Summer 1999 at 341-359.

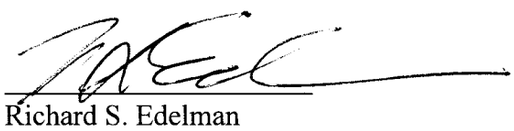
Consequently, the Board's statement that it will look with "extreme disfavor" on cramdown "except to the very limited extent necessary to carry out an approved transaction" offers cold comfort to Rail Workers because of the misuse of the word "necessary" and the words "carry out" under prior ICC and STB decisions. If the Board truly intends a change in this area, its use of this language is likely to frustrate its purpose. Moreover, although the ARU agree that these problems ought to be resolved by negotiations Rail Labor and Rail Management, the current legal environment is such that negotiations can not produce a fair outcome. The carriers know that current cramdown precedent strongly favors their position and that leads to a take-it-or-leave-it approach to bargaining. The imbalance in the bargaining posture of the parties is a result of recent ICC and STB precedent. Bargaining will only be meaningful of the Board uses the new regulations to end the tilt toward management.

Moreover, the reality of the nature of future major consolidations is such that not only is there no legal basis for the current regime, it can no longer be justified as a matter of policy. There can simply be no necessity for CBA overrides in connection with future Class I consolidations which will be transcontinental in scope. The fact that two railroads will meet in Chicago or Kansas City can not possibly necessitate overriding the collective bargaining agreements covering tens of thousands of employees on the east and west coasts. Integration of operations at a connecting point could not possibly require having seniority districts stretching from Pennsylvania to Colorado, combining seniority districts in New England under an agreement applicable in Texas, or placing shops in Kentucky under agreements applicable to shops in California when there will be no interchange of work or employees between the facilities. While there never was merit to the purported rationale for agreement overrides as

applied by the ICC and STB, it is facially specious with respect to the transactions that will be covered by the new regulations.

The ARU submit that given the cramdown precedent, and the nature of future major consolidations, the Board should adopt the changes proposed by the TTD Rail Labor Division and end cramdown because it can no longer be said to be necessary to the carrying-out of any major consolidation.

Respectfully submitted,



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Dated: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Comments of the "Allied Rail Unions" In Response To Notice Of Proposed Rulemaking in Ex Parte No. 582 (Sub. No. 1) Major Rail Consolidations to be served by First Class Mail on all persons listed on the service list for this proceeding

11/17/00
Date

Richard S. Edelman